IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 3728 of 2005()

CC.272/2002 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER:

SAILESH MOHAN SHARMA, DIRECTOR,
M/S.RAM BAHADUR THAKUR LTD., II MAIN ROAD,
WILLINGDON ISLAND, COCHIN-682 003.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

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1. M/S.APPLE CREDIT CORPORATION LTD.,
REPRESENTED BY ITS AUTHORISED AGENT
MR.ABDUL NASEER, ASSISTANT OFFICER RECOVERY,
CHOICE TOWERS, PANAMPILLY NAGAR, COCHIN-682 016.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, OFFICE OF THE ADVOCATE
GENERAL, HIGH COURT BUILDINGS, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED.
SRI.P.T.JOSE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/11/2006, ALONG WITH CRMC NO. 3742 OF 2005 CRMC NO. 3737 OF 2005 CRMC NO. 3741 OF 2005 CRMC NO. 3745 OF 2005 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs. 3728, 3737, 3741, 3742 & 3745 OF 2005

Dated this the 30th day of November, 2006

ORDER

The identical payer made in these Crl.M.Cs. by the common petitioner, who is the 3rd accused in a prosecution under Sec.138 of the N.I. Act, is that the prosecutions in so far as they relate to him may be quashed. Counsel for both sides were heard.

2. The 1st respondent is the complainant. The 1st accused is the Company. The 2nd accused is the authorised representative who signed the cheques on behalf of the Company. The petitioner/3rd accused is alleged to be the Director of the Company. The contention of the petitioner/3rd accused is that there are no allegations whatsoever attracting culpability under Sec.138 read with Sec.141 of the N.I. Act. The learned counsel for the petitioner relies on the proposition (a) laid down by the Supreme Court in **S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla** (2005 (8) SCC 89) and the decision of the Division Bench of this Court in

Mymoonath Beevi v. State of Kerala (2005 (4) KLT 174).

3. Except the statement in the cause title which describes the petitioner as the Director of the 1st accused – Company, there is no allegation whatsoever that the petitioner is in charge and responsible to the Company for the conduct of its affairs. In the total absence of such an averment, the petitioner, in the light of the decisions referred above, cannot be made liable under Sec.138 read with Sec.141 of the N.I. Act. Cognizance was incorrectly and wrongly taken against him. I am satisfied that, in the interests of justice, the petitioner is entitled to succeed in the challenge raised in these petitions.

4. In the result, these Crl.M.Cs. are allowed. The prosecutions initiated in C.C.Nos.272/02, 522/02, 1460/2000, 271/02 and 523/02 pending before the Additional Chief Judicial Magistrate's Court, Ernakulam, in so far as they relate to the petitioner is concerned are hereby quashed.

(R. BASANT, JUDGE)

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